

Express Mail Label No.:

EV2925708555US

Date: 1/24/05

TERMINAL DISCLAIMER TO OBLIGATE A DOUBLE  
PATENTING REJECTION OVER A PRIOR PATENT

Docket Number:

B1136.70000US04

In re Application of: Edward P. Ingenito  
Application No. 10/649,232  
Confirmation No. 6203  
Filed: August 26, 2003  
For: TISSUE VOLUME REDUCTION

The owner\*, Aeris Therapeutics, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §154 to §156 and §173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,682,520. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §154 to §156 and §173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. §1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1.  For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2.  The undersigned is an attorney or agent of record.

Signature

January 24, 2005

Date

David Dove, MD  
President & CEO, Aeris Therapeutics, Inc.

\* Certification under 37 C.F.R. 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP §324.



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EV29256855SUS

Attorney Docket No: B1136.70000US04  
Date:

### STATEMENT UNDER 37 CFR 3.73(b)

**Applicant:** Edward P. Ingenito

**Serial No:** 10/649,232      **Filed:** August 26, 2003

**Confirmation No:** 6203

**Entitled:** TISSUE VOLUME REDUCTION

Aeris Therapeutics, Inc.      a      Corporation

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is the assignee of the entire right, in the patent application identified above by virtue of:

[X] an Amended and Restated Patent Assignment executed on August 16, 2004 by the inventor (Edward P. Ingenito). This Amended and Restated Patent Assignment was submitted to the United States Patent and Trademark Office for recordation on January 18, 2005 (a copy of the assignment and recordation submission is attached).

The above-referenced Amended and Restated Patent Assignment expressly revokes and replaces the Patent Assignment from Edward P. Ingenito to Bistech, Inc., dated October 16, 2002 of U.S. Serial No. 09/379,460 entitled "Tissue Volume Reduction" filed August 23, 1999, which was recorded on October 21, 2002 at the United States Patent and Trademark Office and assigned Reel No. 013397 and Frame No. 0932. The instant application is a continuation of U.S. Serial No. 09/379,460 (now U.S. Patent No. 6,610,043).

The assignee, Aeris Therapeutics, Inc. was previously known as Bistech, Inc. A copy of a "Certificate of Amendment to Certificate of Incorporation of Bistech, Inc." (changing the name of the corporation from Bistech, Inc. to Aeris Therapeutics, Inc.) also is attached.

[ ] Additional documents in the chain of title are listed on a supplemental sheet.

[X] Copies of assignments or other documents in the chain of title are attached.  
The undersigned (whose title is supplied below) is empowered to sign this certificate on behalf of the assignee.

January 24, 2005

Date

David Dove, MD

President & CEO, Aeris Therapeutics, Inc.



Express Mail Label No.:

EV292568555US

Date: 1/24/05

## FAX COVER

\*\*\*\*\***OFFICIAL FAX**\*\*\*\*\*

**Date:** January 18, 2005      **Number of pages** (including cover): 5

**To:** Assignment Recordation Services, U.S. Patent and Trademark Office

**Fax No.:** 703-306-5995

**Serial No.:** 10/649,232

**Title:** TISSUE VOLUME REDUCTION

**From:** Patrick R.H. Waller

**Direct dial:** 617.646.8223

**Our File #:** B1136.70000US04

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### CERTIFICATE OF FACSIMILE TRANSMISSION 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being transmitted via facsimile to 703-306-5995, at the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, in accordance with 37 C.F.R. §1.6(d), on the 18th day of January, 2005.

Patrick R.H. Waller

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ORIGINAL DOCUMENTS WILL NOT BE MAILED.

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**MESSAGE:** Transmitted herewith is/are . Amended and Restated Patent Assignment and Assignment Recordation Sheet

This transmission contains confidential information intended for use only by the above-named recipient. Reading, discussing, distributing, or copying this message by anyone other than the named recipient, or his or her employees or agents, is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone (collect), and return the original message to us at the address below via the U.S. Postal Service.

**IF YOU DID NOT RECEIVE ALL OF THE PAGES OF THIS TRANSMISSION, OR IF ANY OF THE PAGES ARE ILLEGIBLE, PLEASE CALL 617.720.3500 IMMEDIATELY.**

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Wolf Greenfield Fax Number: 617.720.2441

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Wolf, Greenfield & Sacks, P.C. | 600 Atlantic Avenue | Boston, Massachusetts 02210-2206  
617.720.3500 | fax 617.720.2441 | [www.wolfgreenfield.com](http://www.wolfgreenfield.com)

# **RECORDATION FORM COVER SHEET PATENTS ONLY**

FORM PTO-1595 U.S.

FORM 1  
(Rev. 6-93)

(Rev. 6-93) OMB No. 0651-0011 (exp. 4/94)

**DEPARTMENT OF COMMERCE**  
Patent and Trademark Office

**To the Commissioner for Patents :** Please record the attached original documents or copy thereof.

<p>1. Name of conveying party(ies): <b>Edward P. Ingenito</b></p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies)</p> <p>Name: <b>Aeris Therapeutics, Inc.</b></p> <p>Internal Address:</p>
<p>3. Nature of conveyance:</p> <p>Assignment <input type="checkbox"/> Merger  <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name  <input checked="" type="checkbox"/> Other <u>Amended and Restated Patent Assignment</u></p>	<p>Street Address: <b>10A Roessler Road</b>  <b>Woburn, MA 01801</b></p>
<p>Execution Date: <b>August 16, 2004</b></p>	<p>Additional name(s) &amp; addresses(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>4. Application number(s) or patent number(s): 6,610,043, 6,682,520, 10/649,232</p>	
<p>If this document is being filed together with a new application, the execution date of the application is</p>	
<p>A. Patent Application No.(s)</p>	<p>B. Patent No.(s)</p>
<p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p>	<p>6. Total number of applications and patents involved: <b>[3 ]</b></p>
<p>Name: Patrick R.H. Waller, Ph.D.  Address: Wolf, Greenfield &amp; Sacks, P.C.  600 Atlantic Avenue  Boston, MA 02210-2206</p>	<p>7. Total fee (37 CFR 3.41) <b>\$ 120.00</b></p> <p><input type="checkbox"/> Enclosed</p> <p><input checked="" type="checkbox"/> Authorized to be charged to deposit account</p>
<p>The Commissioner is authorized to charge any deficiencies in the enclosed payment to:</p>	
<p>8. Deposit Account No: 23/2825</p>	

**DO NOT USE THIS SPACE**

9. Statement and signature  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Patrick R.H. Waller, Ph.D.	<i>Pat R.H. Waller</i>	1/18/05
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Total number of pages including cover sheet, attachments, and document: [41]

Mail documents to be recorded with required cover sheet information to (modify as appropriate):

Recorded with required cover sheet information to  
**Mail Stop Assignment Recordation Services**

**Mail Stop Assignment Recordation Services  
Director - U.S. Patent and Trademark Office**

Director - U.S. Patent and Trademark Office  
PO Box 1450, Alexandria, VA 22313-1450

Amended and Restated Patent Assignment

This Amended and Restated Patent Assignment hereby expressly revokes and replaces the Patent Assignment from Edward Ingenito to Bistech, Inc., dated October 16, 2002 of U.S. Serial No. 09/379,460 entitled "Tissue Volume Reduction" filed August 23, 1999, which was recorded on October 21, 2002 at the United States Patent and Trademark Office and assigned Reel No. 013397 and Frame No. 0932.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the undersigneds hereby assign, transfer, and convey to Aeris Therapeutics, Inc., a Delaware corporation its principal office at 10A Roessler Road, Woburn, MA 01801 (formerly known as Bistech, Inc.), which, together with its successors and assigns is hereinafter called "ASSIGNEE," the entire right, title, and interest in the invention disclosed in the following applications for Letters Patent of the United States of America:

U.S. Patent Application Serial No. (U.S. Patent No.) [U.S. Patent Application Publication No.]	Title	Filing Date (Issue Date) [Published Date]
09/379,460 (6,610,043)	TISSUE VOLUME REDUCTION	Aug. 23, 1999 (Aug. 26, 2003)
09/839,253 (6,682,520)	TISSUE VOLUME REDUCTION	April 20, 2001 (Jan. 27, 2004)
10/649,232 [US2004/0038868A1]	TISSUE VOLUME REDUCTION	Aug. 26, 2003 [Feb. 26, 2004]

and in said applications and any and all provisionals, divisionals, continuations, reissues, reexaminations or extensions thereof as well as any corresponding counterparts, including foreign counterparts and equivalents thereof, including the right to sue for past infringement.

The undersigneds hereby authorize ASSIGNEE to file patent applications in any or all countries on any or all of said inventions and discoveries in the undersigneds' names or in the name of ASSIGNEE or otherwise as ASSIGNEE may deem advisable, under International Conventions or otherwise.

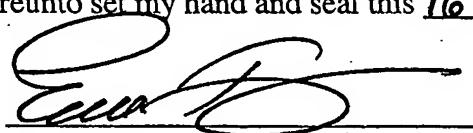
The undersigneds hereby authorize and request the Commissioner of Patents and Trademarks of the United States of America and the empowered officials of all other

governments throughout the world to issue or transfer all Patents to ASSIGNEE, as assignee of the entire right, title, and interest therein or otherwise as ASSIGNEE may direct.

The undersigneds warrant that, with the revocation of the Patent Assignment from Edward Ingenito to Bistech, Inc., dated October 16, 2002 of U.S. Serial No. 09/379,460 entitled "Tissue Volume Reduction" filed August 23, 1999, which was recorded on October 21, 2002 at the United States Patent and Trademark Office and assigned Reel No. 013397 and Frame No. 0932, they have not conveyed to others any right in said inventions, discoveries, applications, or patents, or any license to use the same, or to make, use, or sell anything embodying or utilizing any of said inventions or discoveries; and that they have good right to assign the same to ASSIGNEE without encumbrance;

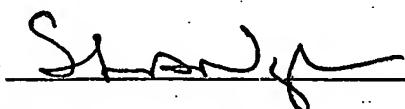
The undersigneds bind their heirs, legal representatives, and assigns, as well as themselves, to do, upon ASSIGNEE's request and at ASSIGNEE's expense, but without additional consideration to either itself or them, all acts reasonably serving to assure that said inventions and discoveries, said patent applications, and said Letters Patent(s) shall be held and enjoyed by ASSIGNEE as fully and entirely as the same could have been held and enjoyed by the undersigneds, their heirs, legal representatives, and assigns if this Assignment had not been made.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16<sup>th</sup> day of August, 2004.



Edward Ingenito

On this 16<sup>th</sup> day of August, 2004, before me, the undersigned Notary public, personally appeared Edward Ingenito, proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document in my presence.



---

Signature and seal of notary

Steven A. Naylor  
Notary Public  
My Commission Expires  
January 8, 2010

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of August, 2004.

Robert Scalea

On this 24 day of August, 2004, before me, the undersigned Notary public, personally appeared Robert Scalea, proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document in my presence.

Susan E. Kohl

~~Signature and seal of notary~~

**SUSAN E. KOHL**  
NOTARY PUBLIC, State of New York  
No. 01KO4899218  
Qualified in Queens County  
Commission Expires June 29, 2007

JOB STATUS REPORT

TIME : 01/18/2005 6:  
NAME : WOLF GREE EL  
FAX# : 617-720-2  
TEL# :

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DATE, TIME	01/18 16:26
FAX NO./NAME	917033065995#1615
DURATION	00:01:29
PAGE(S)	05
RESULT	OK
MODE	STANDARD ECM

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EV292568555

Date: 1/24/05

# Delaware

PAGE 1

**COPY**

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "BISTECH, INC.", CHANGING ITS NAME FROM "BISTECH, INC." TO "AERIS THERAPEUTICS, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF DECEMBER, A.D. 2003, AT 3:58 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3219499 8100

030827711

AUTHENTICATION: 2837081

DATE: 12-24-03

# BEST AVAILABLE COPY

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 05:26 PM 12/22/2003  
FILED 09:58 PM 12/22/2003  
SRV 030927711 - 3219499 FILED.

## CERTIFICATE OF AMENDMENT TO CERTIFICATE OF INCORPORATION OF BISTECH, INC.

Bistech, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DORS HEREBY CERTIFY:

1. FIRST: That, by written consent of the Board of Directors of the Corporation, resolutions were duly adopted setting forth a proposed amendment to the Certificate of Incorporation, declaring the amendment to be advisable and directing the shareholders to consider the amendment and indicate their authorization by consent in writing. The resolution setting forth the text of the proposed amendment is as follows:

"Resolved: That it is desirable and in the best interest of the Corporation to amend Article First of the Certificate of Incorporation of the Corporation by changing the corporate name of the Corporation from Bistech, Inc. to Acris Therapeutics, Inc."

2. SECOND: That thereafter, pursuant to said resolutions of its Board of Directors, the holders of record of not less than (i) a majority of the shares of Series A Convertible Preferred Stock, par value \$0.01 per share, and Series B Convertible Preferred Stock, par value \$0.01 per share, and Series C Convertible Preferred Stock, par value \$0.01 per share, of said corporation voting as one class (the "Preferred Stock") AND (ii) a majority of the issued and outstanding shares of Common Stock and the Preferred Stock on an as-converted basis, of said corporation, representing not less than the minimum number of votes necessary to authorize and take the actions set forth therein, duly adopted said amendment by written consent in lieu of meeting of the holders of capital stock in accordance with Sections 211 and 228 of the General Corporation Law of the State of Delaware.

3. THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Bistech, Inc. has caused this certificate to be signed this 17th day of December 2003.

BISTECH, INC.

BY: David Dova  
David Dova, President